

Message Text

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INFO OCT-01 ARA-10 EUR-12 ISO-00 FEA-01 ACDA-12
AGRE-00 AID-05 CEA-01 CEQ-01 CG-00 CIAE-00
COME-00 DLOS-09 DODE-00 DOTE-00 EB-08 EPA-01
ERDA-05 FMC-01 TRSE-00 H-01 INR-07 INT-05 IO-13
JUSE-00 NSAE-00 NSC-05 NSF-01 OES-07 OMB-01 PA-01
PM-05 PRS-01 SP-02 SS-15 USIA-06 /140 R

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FM SECSTATE WASHDC
TO AMEMBASSY GEORGETOWN PRIORITY
INFO AMEMBASSY MEXICO PRIORITY
AMEMBASSY KINGSTON PRIORITY
AMEMBASSY PARAMARIBO PRIORITY
AMEMBASSY PANAMA PRIORITY
AMEMBASSY PORT OF SPAIN PRIORITY
AMEMBASSY BRUSSELS PRIORITY
AMCONSUL MARTINIQUE

C O N F I D E N T I A L STATE 254060

FOR RAY ARNAUDO NMFS/COMM, MEXICO FOR FISHATT

E.O. 11652: GDS

TAGS: PBOR, EFOS, BY

SUBJECT: GOC FISHING ZONE LICENSING REGULATIONS

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REF: (A) STATE 246196 (B) GEORGETOWN 02580

1. REF A NOTED THAT EMBARGO PROVISIONS OF U.S. LAW MIGHT
BE INVOKED IF THE GUYANESE DID NOT REDUCE FISHING FEES.
REF B AND TELECONS HAVE RAISED THE QUESTION OF WHETHER SAME
LEGAL SANCTIONS MIGHT APPLY IF GUYANESE REQUIRE HIGHER FEES
FOR FOREIGN-BASED U.S. VESSELS THAN FOR GUYANA-BASED VES-

SELS.

2. FOLLOWING ANALYSIS IS OFFERED FOR THE INFORMATION OF THE EMBASSY ONLY; HOWEVER, EMB MAY DRAW ON THOUGHTS PROVIDED IN MAKING CASE WITH GUYANESE. ANALYSIS REFLECTS THE INITIAL VIEWS OF THE DEPARTMENT ONLY, AND HAS NOT BEEN CLEARED WITH OTHER CONCERNED AGENCIES AND DEPARTMENTS. ANY FORMAL STATEMENT ON THE ISSUE WOULD, OF COURSE, HAVE TO WAIT UNTIL THE GUYANESE PERMIT FEES ARE FINALIZED.

3. WITH THE CAVEATS IN PARA 2, DEPARTMENT'S INITIAL VIEW IS THAT A DISTINCTION BETWEEN GUYANA-BASED AND FOREIGN-BASED US FLAG VESSELS WOULD NOT REPEAT NOT BE ADEQUATE GROUNDS FOR IMPOSING AN EMBARGO ON GUYANESE SHRIMP IMPORTS

UNDER THE PROVISIONS OF THE FISHERY CONSERVATION AND MANAGEMENT ACT (FCMA), ALTHOUGH THE QUESTION OF THE REASONABLENESS OF THE FEES IS STILL OUTSTANDING. IT SHOULD BE CLEAR HOWEVER, THAT NO MATTER HOW STRONG THE LEGAL BASIS, AS A POLITICAL MATTER THE US FISHING INTERESTS ADVERSELY AFFECTED ARE LIKELY TO PRESS FOR AN EMBARGO.

4. THE EMBARGO PROVISION OF THE FMCA IS SEC. 205 (16 U.S.C. 1825). UNDER SUBSECTION (A), THE PROVISION MOST LIKELY TO BE RELEVANT IN THIS INSTANCE, AND EMBARGO MAY BE IMPOSED AGAINST FISH AND FISHING PRODUCTS FROM A FOREIGN COUNTRY IF

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THE SECRETARY OF STATE DETERMINES (1) THAT HE HAS BEEN UNABLE TO CONCLUDE AN INTERNATIONAL FISHING AGREEMENT WITH THE FOREIGN COUNTRY CONCERNED (2) WITHIN A REASONABLE TIME (3) ALLOWING FISHING VESSELS OF THE UNITED STATES "EQUITABLE ACCESS" TO FISHERIES IN ACCORDANCE WITH TRADITIONAL FISHING ACTIVITIES OF SUCH VESSELS AND UNDER TERMS NOT MORE RESTRICTIVE THAN THOSE ESTABLISHED BY THE UNITED STATES AS APPLICABLE TO FOREIGN FISHERMEN OFF THE U.S. COAST (4) BECAUSE SUCH FOREIGN COUNTRY HAS EITHER REFUSED TO COMMENCE NEGOTIATIONS OR TO NEGOTIATE IN GOOD FAITH.

IN SEEKING AN EMBARGO, AFFECTED US FISHING INTERESTS WOULD PRESUMABLY ARGUE THAT THE SECRETARY OF STATE HAD BEEN UNABLE TO CONCLUDE A FISHING AGREEMENT WITH GUYANA UNDER TERMS NOT MORE RESTRICTIVE THAN THOSE ESTABLISHED UNDER THE FMCA. IN PARTICULAR, THE FCMA PROVIDES THAT OWNERS OF FOREIGN VESSELS FISHING UNDER US PERMITS SHALL PAY REASONABLE FEES WHICH SHALL APPLY NON-DISCRIMINATORILY TO EACH FOREIGN NATION. THEY WOULD FURTHER CONTEND THAT THE REASON A SATISFACTORY AGREEMENT COULD NOT BE REACHED WAS THAT THE GUYANESE WERE NOT NEGOTIATING IN GOOD FAITH.

5. DEPT. FINDS SEVERAL PROBLEMS WITH THIS ARGUMENT. FIRST, THERE WOULD HAVE TO BE A FINDING THAT THE GUYANESE WERE NOT NEGOTIATING IN GOOD FAITH. THIS WOULD BE DIFFICULT TO ESTABLISH WHEN THE GUYANESE PURPOSE IS TO IMPROVE THEIR FISHING-RELATED INDUSTRIES, A PURPOSE RECOGNIZED BY THE FMCA.

SECOND, THERE IS A QUESTION WHETHER THE DISTINCTION BETWEEN GUYANA-BASED AND FOREIGN-BASED US VESSELS IN THE LEVEL OF FEES IMPOSED WOULD BE A "MORE RESTRICTIVE" TERM THAN THE FEE TERMS ESTABLISHED BY THE UNITED STATES. IT IS TRUE THAT THE USG DOES NOT PRESENTLY DISTINGUISH BETWEEN US AND FOREIGN-BASED VESSELS IN SETTING PERMIT FEES. HOWEVER, THERE IS NO REASON WHY THE USG COULD NOT DO CONFIDENTIAL

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SO. FURTHERMORE, THE DEPT DOES NOT INTERPRET THE PHRASE "MORE RESTRICTIVE" TO APPLY TO ANY FOREIGN FISHING REGULATION WHICH IS RATIONALLY RELATED TO FISHERY CONSERVATION OR MANAGEMENT IS "NOT MORE RESTRICTIVE" THAN THE TERMS ESTABLISHED UNDER THE FCMA AND THEREFORE DOES NOT PROVIDE THE BASIS FOR IMPOSING AN EMBARGO. ARGUABLY, GUYANA COULD SAY THAT ITS DISTINCTION BETWEEN GUYANA-BASED AND FOREIGN-BASED US-FLAG VESSELS WOULD BE TO BUILD UP ITS DOMESTIC PROCESSING INDUSTRY, AND OTHER DOMESTIC INDUSTRIES RELATED TO FISHING. IT IS NOT UNREASONABLE TO SUPPOSE THAT THE DISTINCTION IN LICENSING FEES WOULD ENCOURAGE MORE VESSEL OWNERS TO BASE THEIR VESSELS IN GUYANA AND THUS TO HAVE THEIR FISH PROCESSED THERE. THE GUYANESE AIM OF BUILDING UP DOMESTIC INDUSTRIES RELATED TO FISHING IS CONSISTENT WITH ONE OF THE UNDERLYING PURPOSES OF THE FCMA, TO DEVELOP US FISHERIES AND RELATED INDUSTRIES. THUS IT WOULD BE DIFFICULT TO CONCLUDE THAT A SIMPLE DISTINCTION IN FEE LEVELS BASED ON A PURPOSE RECOGNIZED BY THE FCMA, WOULD BE THE FOUNDATION FOR THE IMPOSITION OF AN EMBARGO.

6. FINALLY, THE FCMA REQUIRES THAT THE FEES BE "REASONABLE". IN DEPARTMENT'S VIEW THE FEES BEING ASKED BY GUYANA FOR THE FOREIGN BASED US FLAG VESSELS REMAIN MUCH TOO HIGH AND ARE SUBJECT TO A CHARGE OF UNREASONABLENESS. THE AMOUNT OF THE FEE MAKES IT UNECONOMICAL TO CONDUCT THE FISHERY FROM A FOREIGN BASE, AND HAS THE EFFECT OF COERCING RATHER THAN INDUCING VESSELS TO BE BASED IN GUYANA.

7. DEPT. HOPES FOREGOING RESPONSIVE TO REQUEST REF C. EMB SHOULD CONTINUE TO MAKE EVERY EFFORT TO PERSUADE GUYANESE TO REDUCE FEES FOR FOREIGN BASED US FLAG CONFIDENTIAL

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VESSELS AS THIS COULD STILL PROVIDE BASIS ON WHICH
TO ARGUE FOR AN EMBARGO. VANCE

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Message Attributes

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Decaption Note:
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Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 22 May 2009
Disposition Event:
Disposition History: n/a
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